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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DARREN SHANKS,) Case No.: 1:20-cv-01083-SAB (PC)
12)
13 Plaintiff,)
14 v.) ORDER DENYING PLAINTIFF’S MOTION FOR
15 E. MENDEZ, et al.,) APPOINTMENT OF COUNSEL, WITHOUT
16) PREJUDICE
17) (ECF No. 14)
18)
19 Defendants.)
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Plaintiff Darren Shanks is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed September 17, 2020.

Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether

1 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
 2 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
 3 legal issues involved.” Id. (internal quotation marks and citations omitted).

4 The test for exceptional circumstances requires the Court to evaluate the Plaintiff’s likelihood
 5 of success on the merits and the ability of the Plaintiff to articulate his claims pro se in light of the
 6 complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir.
 7 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most
 8 prisoners, such as lack of legal education and limited law library access, do not establish exceptional
 9 circumstances that would warrant a request for voluntary assistance of counsel. In the present case, on
 10 September 9, 2020, the Court screened Plaintiff’s complaint, found he stated a cognizable retaliation
 11 claim, and granted leave to either file an amended complaint or notify the Court of his intent to
 12 proceed only on the retaliation claim. (ECF No. 13.) Thus, the Court finds that Plaintiff is capable of
 13 litigating this action even if it is with the assistance of another inmate. In addition, although Plaintiff
 14 attaches medical documents reflecting that he suffers from incontinence, among other things, such
 15 circumstances are not extraordinary. While the Court recognizes that Plaintiff is at a disadvantage
 16 due to his pro se status and his incarceration, the test is not whether Plaintiff would benefit from the
 17 appointment of counsel. See Wilborn v. Escalderon, 789 F.2d at 1331 (“Most actions require
 18 development of further facts during litigation and a pro se litigant will seldom be in a position to
 19 investigate easily the facts necessary to support the case.”) The test is whether exception
 20 circumstances exist and here, they do not. Accordingly, Plaintiff’s motion for appointment of counsel
 21 is be DENIED without prejudice.

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 23 IT IS SO ORDERED.

24 Dated: September 21, 2020


 UNITED STATES MAGISTRATE JUDGE